

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 3, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0385-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM M. JONES,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

EICH, C.J.¹ William Jones appeals from an order denying his motion for sentence credit. We affirm.

On June 22, 1994, the Dodge County Circuit Court sentenced Jones to 180 days in jail for operating a motor vehicle while intoxicated. The sentence was stayed for sixty days, until August 21. The following day, June 23, 1994, the

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

Fond du Lac County Circuit Court sentenced Jones to ninety days in jail for operating a motor vehicle after his license had been revoked. For some reason not revealed in the record, this sentence was stayed until August 20, 1994.

Jones did not report to the Dodge County Jail to begin his sentence on August 21 as ordered by the court. On August 22 a friend of Jones informed the Dodge County Jail by telephone that Jones was serving a jail term in Fond du Lac County. When he had completed the Fond du Lac County sentence, he presented himself at the Dodge County Jail to begin that sentence and moved the court for credit on the Dodge County sentence for the time he had served in Fond du Lac County. The court denied the motion, and Jones appeals.

Jones asks us to declare the two sentences to be concurrent, citing a 1922 case, *Application of McDonald*, 178 Wis. 167, 171, 189 N.W. 1029, 1030 (1922), for the proposition that, with certain exceptions not applicable here, "a sentence for an offense imposed at a time when another sentence is actually or constructively being served is a concurrent sentence." He does not explain how the proposition may be said to apply to his situation, where he had not yet been convicted of the second offense--in another county--when the first sentence was imposed. And he concedes that the Dodge County court had no authority to order the two sentences (one of which did not even exist at the time) to be served either concurrently or consecutively. As to his argument that the sentences must, under *McDonald*, be considered concurrent as a matter of law because the Fond du Lac County court did not state otherwise, he has not referred us to any place in the record indicating that the Fond du Lac County court was even aware of the Dodge County sentence.

Jones also points to *State v. Riske*, 152 Wis.2d 260, 448 N.W.2d 260 (Ct. App. 1989), as authority for his position. In that case, the defendant was denied admission to jail following his sentence due to overcrowding. He was told to return at a later date and released, but he failed to present himself to the jailers on the appointed date. We held that he was entitled to sentence credit for the time between imposition of the sentence and the date he was ordered to report. *Id.* at 264-65, 448 N.W.2d at 261-62. *Riske* is inapposite. Unlike the defendant in *Riske*, Jones was not turned away on the date of his Dodge County sentence for the facility's inability to take him in; his sentence was specifically "stayed" by the court for sixty days.

Under § 973.15(1), STATS., "time which elapses after sentence while the convicted offender is at large on bail shall not be computed as any part of the term of imprisonment." And while the record does not indicate that Jones was on "bail" during the sentence stay, we see little difference. The Dodge County court granted Jones time at large before the sentence was to begin, and if the law specifically denies sentence credit when a defendant is released subject to the conditions (and sanctions) of bail, we do not see how credit may be granted where the court permits unconditional release prior to commencement of the sentence. It is true, of course, that the way things turned out, Jones was not at liberty during the period of the stay, but that was the result of a wholly independent force: his conviction and sentence on another charge in another county. We agree with the State that Jones failed to comply with the order of the Dodge County court setting the commencement date of his sentence and that "[s]uch disobedience should not be rewarded by sentence credit simply because the defendant happened to be incarcerated in the Fond du Lac County Jail on a subsequently imposed sentence."

We see no error in the trial court's ruling that, by failing to report to jail on August 21 or by failing to make other arrangements prior to that time,² Jones violated the court's order and should not be permitted to reap a "reward" for doing so.³

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

² The Judgment of Conviction and Sentence stayed the sentence to August 21 and stated that "defendant shall report to the Dodge County Jail on that date unless prior arrangements are made"

³ Jones's assertion that he "did the right thing" by having someone call the Dodge County Jail to tell them he was incarcerated in Fond du Lac County is equally unavailing. When he sent word of his Fond du Lac incarceration to the Dodge County Jail, he was already in plain violation of the court's order, and we do not see how that violation can, as Jones suggests, impose a duty on the Dodge County jailers to "arrange[]" for his transfer to Dodge County [so that he] could have petitioned the Fond du Lac County Court for a concurrent sentence." We see nothing wrong with a decision that simply requires Jones to lie down in a bed of his own making.